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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/618,353 | 07/11/2003 | Jean-Marie Mathias | F-5932 | 6728 |

7590 04/21/2006
Baxter Healthcare Corporation
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| EXAMINER |
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WITCZAK, CATHERINE

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| ART UNIT | PAPER NUMBER |
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3767

DATE MAILED: 04/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/618,353

Applicant(s)

MATHIAS, JEAN-MARIE

Examiner

Catherine N. Witczak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 13 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/20/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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## DETAILED ACTION

### *Election/Restrictions*

Applicant's election with traverse of claims 1-9, and 11, in the reply filed on 3/21/2006 is acknowledged.

The traversal is on the grounds that: (1) all the claims are sufficiently related to allow for examination of all claims together, (2) the restriction between the embodiment of Figure 9 and Figure 10 is unnecessary in that both show the claimed needle protector with a cap.

In light of Applicant's remarks, claim 10 will be examined with the elected claims 1-9, and 11.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Dillon et al (US 6,165,157).

Claim 1: Dillon et al disclose in Figure 1 a blood collection needle assembly including a piercing end (16), a hub (18) and a blood collection tube (12); a unitary body (10) including a plurality of side walls and an open end (30) for receiving the hub (18); wherein one of the side walls includes a retaining

  
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member (36) adapted for contacting said hub of said needle assembly; and wherein one of said side walls defines a viewing slot (37).

Claim 2: Dillon et al disclose in Figure 2 the second opening (28) comprising a multiple profile window to receive and secure the tubing (12).

Claim 3: Dillon et al disclose in Figure 1a a retaining member (36) defines a slot for viewing the interior chamber.

Claim 4: Dillon et al disclose in Figure 5 one of the sidewall comprising guiding ledges (80).

Claim 5: Dillon et al disclose in Figures 5 and 6 the guiding ledges (80) extending inwardly from the sidewall including the retaining member.

Claims 6 and 7: Dillon et al disclose in Figure 5 the sidewall including an axial groove (74).

Claim 8: Dillon et al disclose the retaining member (36) comprising a detent.

Claim 9: Dillon et al disclose a outwardly extending radial flange (4) at open distal end.

2. Claims 1, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Osterlind et al (US 5,951,523).

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Claim 1: Osterlind et al disclose in Figures 1 and 3 a blood collection needle assembly including a piercing end (8), a hub (10) and a blood collection tube (column 1, lines 45-50); a unitary body (22) including a plurality of side walls and an open end (30) for receiving the hub; wherein one of the side walls includes a retaining member (20) adapted for contacting said hub of said needle assembly; and wherein one of said side walls defines a viewing slot (22).

Claim 10: Osterlind et al disclose in Figure 3 the open distal end comprising a cap (28).

Claim 11: Osterlind et al disclose a needle protector assembly comprising a piercing end (8), a hub (10) and a blood collection tube (column 1, lines 45-50); the hub comprising a rib (14) extending outwardly therefrom, and a body (22) including a plurality of side walls and an open end for receiving the hub (10); wherein one of the side walls includes a retaining member (20) adapted for contacting said hub of said needle assembly; and wherein one of said side walls defines an axial groove (20).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine N. Witczak whose telephone number is (571) 272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MICHAEL J. HAYES  
PRIMARY EXAMINER